

Senate Judiciary Committee Amendment No. 5, as amended; (by Cohen)

Amendment No. 4 to SB3192

Cohen
Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 3192

House Bill No. 3232*

by adding the following new sections immediately preceding the last section and by renumbering the subsequent section accordingly:

SECTION _____. Tennessee Code Annotated, Title 40, Chapter 17, Part 1, is amended by adding the following as a new, appropriately designated section:

40-17-1____.

(a) The following procedure shall be employed when a law enforcement officer, as defined in §39-11-106, seeks to obtain a subpoena for the production of books, papers, records, documents, tangible things, or information and data electronically stored for the purpose of establishing, investigating or gathering evidence for the prosecution of a criminal offense.

(b) If the officer has reason to believe that a criminal offense has been committed or is being committed and that requiring the production of documents or information is necessary to establish who committed or is committing the offense or to aid in the investigation and prosecution of the person or persons believed to have committed or believed to be committing the offense, the officer shall prepare an affidavit in accordance with subsection (c).

(c) An affidavit in support of a request to compel the production of books, papers, records, documents, tangible things, or information and data electronically stored shall state with particularity the following:

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(1) A statement that a specific criminal offense has been committed or is being committed and the nature of such offense;

(2) The articulable reasons why the law enforcement officer believes the production of the documents requested will materially assist in the investigation of the specific offense committed or being committed;

(3) The custodian of the documents requested and the person, persons or corporation about whom the documents pertain;

(4) The specific documents requested to be included in the subpoena; and

(5) The nexus between the documents requested and the criminal offense committed or being committed.

(d)

(1) Upon preparing the affidavit, the law enforcement officer shall submit it to either a judge of a court of record or a general sessions judge who serves the officer's county of jurisdiction. The judge shall examine the affidavit and may examine the affiants under oath. The judge shall grant the request for a subpoena to produce the documents requested if the judge finds that the affiants have presented a reasonable basis for believing that:

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(A) A specific criminal offense has been committed or is being committed;

(B) Production of the requested documents will materially assist law enforcement in the establishment or investigation of such offense;

(C) There exists a clear and logical nexus between the documents requested and the offense committed or being committed; and

(D) The scope of the request is not unreasonably broad or the documents unduly burdensome to produce.

(2) If the judge finds that all of the criteria set out in subsection (d)(1) exist as to some of the documents requested but not all of them, the judge may grant the subpoena as to the documents that do but deny it as to the ones that do not.

(3) If the judge finds that all of the criteria set out in subsection (d)(1) do not exist as to any of the documents requested, the judge shall deny the request for subpoena.

(e) The affidavit filed in support of any request for the issuance of a subpoena pursuant to this section shall be filed with and maintained by the court. If a subpoena is issued as the result

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of such an affidavit, such affidavit shall be kept under seal by the judge until a copy is requested by the district attorney general, criminal charges are filed in the case, or the affidavit is ordered released by a court of record for good cause.

(f) A subpoena granted pursuant to this section by a judge of a court of record shall issue to any part of the state and shall command the person, or designated agent for service of process, to whom it is directed to produce any books, papers, records, documents, tangible things, or information and data electronically stored that is specified in such subpoena, to the law enforcement officer and at such reasonable time and place as is designated in the subpoena. A subpoena granted pursuant to this section by a judge of a court of general sessions shall in all respects be like a subpoena granted by the judge of a court of record but shall issue only within the county in which such sessions judge has jurisdiction. The court shall prepare or cause to be prepared the subpoena and it shall describe the specific materials requested and set forth the date and manner the materials are to be delivered to the officer.

(g) If the subpoena is issued by a judge of a court of record, it may be served by the officer in any county of the state by personal service, registered mail, or by any other means with

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the consent of the person named in the subpoena. If the subpoena is issued by a judge of a general sessions court it shall be served by an officer with jurisdiction in the county of the issuing judge but may be served by personal service, registered mail, or by any other means with the consent of the person named in the subpoena. The officer shall maintain a copy of the subpoena and endorse thereon the date and manner of service as proof thereof.

(h) No person shall be excused from complying with a subpoena for the production of documentary evidence issued pursuant to this section on the ground that production of the requested materials may tend to incriminate such person. Any person claiming such privilege against self incrimination must assert such claim before the court of record issuing the subpoena and before the time designated for compliance therewith. If the district attorney general thereafter certifies to the court that the interests of justice demands the production of the requested materials for which the claim of privilege is asserted, then the court shall order the production of such materials and no such individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning the requested materials the person was compelled to produce. If the person fails to assert the privilege against self-

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incrimination, such person may raise this issue later but will not be entitled to immunity from prosecution.

(i) No subpoena for the production of documentary evidence authorized by this section shall be directed to, or served upon, any defendant, or his counsel, to a criminal action in this state.

(j) If any person without cause refuses to produce the requested materials within the time and manner designated for compliance by the issuing judge, the district attorney may file a motion for civil contempt with the court with such motion and show cause order being served upon the person. Such order shall designate a time and place for a hearing on the merits. If at the hearing the court finds that the person has willfully refused to produce the requested materials, the court may find that the person is in civil contempt and may assess sanctions accordingly including incarcerating the person with or without bond being set until compliance with the subpoena is satisfied. If the person fails to appear for such hearing, the court may issue a writ of attachment for said person.

(k) A person to whom a subpoena is directed may file a motion to quash or modify the subpoena upon a showing that compliance would be unreasonable or oppressive. Such person

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shall file any such motion stating an objection to the subpoena with the clerk of the court for the issuing judge within seven (7) days of service of the subpoena. The filing of such motion shall stay all proceedings pending the outcome of a hearing before the issuing judge. The judge shall conduct the hearing within seven (7) days of the filing of the motion.

SECTION _____. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.